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To:	Ms. Patricia Faison-Ball	From:	Scott L. Lowe
Fax:	703-872-9306	Date:	February 17, 2005
Phone:		Pages:	12 (including cover sheet)
Your Ref.:	Serial No. 10/665,601	Our Ref.:	3156-0119P
Re:	Filing of Request for Reconsideration CC: of Applicants' Petition under 37 C.F.R. § 1.47(a)		

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PATENT
3156-0119P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Cudney et al. Conf.: 6366
Appl. No.: 10/665,601 Group: 1771
Filed: September 22, 2003 Examiner: J. Guarriello
For: CUSHIONING PADS AND THE FORMATION OF
CUSHIONING PAD

REQUEST FOR RECONSIDERATION OF APPLICANTS'
PETITION UNDER 37 C.F.R § 1.47(a)

By Facsimile: (703) 872-9306

Attention: Ms. Patricia Faison-Ball

MS Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

February 17, 2005

Dear Ms. Faison-Ball:

This Request for Reconsideration is in response to the Dismissal, mailed January 28, 2005, of Applicants' Petition Under 37 CFR 1.47(b), filed March 16, 2004.

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Background of the Petition

The Dismissal states that the Petition should have been filed under 37 CFR 1.47(a), and has been treated under 37 CFR 1.47(a). Petitioners agree, however, for a slightly different reason. There are only two inventors for the subject matter of U.S. Serial No. 10/665,601, which is a Rule 53(b) Continuation Application of U.S. Serial No. 09/335,897. The inventors are Mr. Douglas J. Cudney and Ms. Karen Breitbach. A Declaration was signed by both inventors on September 30, 1999, and was filed on October 14, 1999. A copy of the Declaration is attached hereto.

The Declaration was technically defective because Mr. Cudney's citizenship was omitted. This defect could not be fixed by an Application Data sheet, nor waived by the Primary Examiner, in accordance with MPEP 602.03. The Declaration also omitted Mr. Cudney's post office and residence addresses and Ms. Breitbach's post office address. However, these omissions should be correctable by an Application Data Sheet, as attached hereto. Both inventors have to date refused to sign a corrected Declaration.

The original Declaration filed October 14, 1999 listed the only two inventors as Mr. Douglas J. Cudney and Ms. Karen Breitbach. The Declaration statements of Ms. Beitbach appear to be effective, and the Declaration statements of Mr. Cudney

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appear to be defective. Hence, this should be considered a Petition under 37 CFR 1.47(a) to accept the Declaration, where one of two inventors is refusing to sign a corrected Declaration.

A Declaration was filed on March 16, 2004, along with the Petition, which listed the name of Mr. David H. Anderson. Mr. Anderson is the legal representative (i.e. CEO) of the assignee of record, Phoenix Performance Products, Inc. See the assignment recorded at reel 010311, frames 0363-0365. Mr. Andersen was attempting to sign the Declaration "on behalf" of the non-signing inventors. Mr. Anderson is not an inventor of application serial Nos. 09/335,897 and 10/665,601.

Reason for Dismissal

The Dismissal of the Petition lists three requirements for a grantable Petition. The Dismissal states that the Petitioners have successfully met all the requirements but one. Namely, sufficient proof must be provided that "a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventors." The Dismissal states that "there is no evidence to show that the non-signing inventors had the benefit of reviewing the application."

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Rebuttal to Dismissal

It is noted that the Declaration filed on October 14, 1999 was signed by the two inventors on September 30, 1999. The Declaration states that the inventors have reviewed and understand the contents of the application, as filed, making reference to the application by title and attorney docket number. Further, the inventors, Mr. Cudney and Ms. Breitbach, signed the Declaration acknowledging that willful false statements and the like so made are punishable by fine or imprisonment. It is submitted that the Signed Declaration, filed October 14, 1999, is creditable evidence that both inventors reviewed Application Serial No. 09/335,897, which is the parent application of the present Rule 53(b) Continuation Application Serial No. 10/665,601.

Although the Declaration filed October 14, 1999 is technically defective, we respectfully submit that it is highly reliable evidence that the two inventors did indeed review and understand the application. Indeed both inventors signed the Declaration under penalty of fine and/or imprisonment for false statements. The only problem now is that the inventors refuse to sign a corrected Declaration, specifying the citizenship of Mr. Cudney.

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Conclusion

In conclusion, it is submitted that there is sufficient evidence of record that the two inventors reviewed the application. Therefore, it is requested that the Petition be reconsidered and granted.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By Scott L. Lowe
Scott L. Lowe, #41,458

SLL:sld

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8094Attachments: Declaration filed October 14, 1999
Application Data sheet

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